

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           THE BIG SKY RESORT AREA  
7           DISTRICT

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the Commissioner  
12 of Political Practices (Commissioner) to consider the appeal of the principal  
13 referenced above. Pursuant to the provisions of § 5-7-306, MCA, the principal  
14 appealed the Commissioner's assessment of a civil penalty resulting from its late  
15 filing of a lobbying disclosure report. The principal filed a written Waiver of  
16 Hearing waiving its right to an in-person hearing, and submitted a written statement  
17 for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in the  
19 Commissioner's file, and the applicable law, the Commissioner makes the following  
20 findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. The Big Sky Resort Area District is a principal registered with the  
23 Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor signed  
25 it into law. The law took effect on February 18, 2003. House Bill 38, now codified  
26 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed  
27 against any person who fails to file lobbying disclosure reports within the time  
required by law.

1       3. The post-Session 2007 lobbying disclosure report for the Big Sky Resort Area  
2 District was required to be filed no later than May 29, 2007.

3       4. On May 16, 2007 the office of the Commissioner sent an email to all  
4 principals, including the Big Sky Resort Area District. The email advised principals  
5 that a post-Session 2007 lobbying financial disclosure report was required to be  
6 filed by May 29, 2007. The email referenced the appropriate form that was required  
7 to be filed, known as a form L-5A, and noted that it was available for download on  
8 the Commissioner's website. Citing the provisions of § 5-7-208(4), MCA, the email  
9 stated: "A report must be filed in this office even though neither lobbying nor  
10 incurring of lobbying expenses may have occurred."

11       5. The Big Sky Resort Area District failed to file its L-5A on or before May 29,  
12 2007.

13       6. On May 30, 2007, the Commissioner sent a letter to Al Malinowski stating  
14 that the post-Session L-5A report was due May 29, 2007, but had not been received.  
15 The letter stated that a civil penalty started being assessed on May 30, 2007, at \$50  
16 per day, and would continue until the report was filed or until the penalty amount  
17 reached \$2,500. The letter urged the principal to fax the delinquent report  
18 immediately, followed by a hard copy.

19       7. On May 30, 2007, the principal filed its report. Because the report was filed  
20 one business day late, a \$50 civil penalty was assessed.

21       8. The Big Sky Resort Area District requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on August 9, 2007. The Big Sky Resort Area District filed a written Waiver  
24 of Hearing and submitted a written statement for the Commissioner's consideration.

25       9. In a written statement, Administrative Assistant Leslie Fregien asked on  
26 behalf of the Big Sky Resort Area District that the penalty be waived because late  
27 filing was the result of inexperience and a lack of guidance or training.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(c), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a legislative session,” and the report must include “all payments made during the session, except as previously reported.” If payments are not made during a reporting period, the report shall state that fact. § 5-7-208(4), MCA.

## MEMORANDUM OPINION

Information offered in a written statement by Leslie Fregien did not provide testimony or evidence establishing any factors or circumstances in mitigation that would justify reduction of the civil penalty. A claim of inexperience and confusion, standing alone, generally has no bearing on the requirement for timely filing of a lobbying report, and is not a sufficient basis for reducing or waiving a civil penalty. I urge principals to carefully review and understand the statutory filing requirements to ensure that they comply with the law and to avoid the assessment of civil penalties in the future.

1  
2  
3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that Big Sky Resort Area District  
5 shall pay a civil penalty of \$50 to this office no later than November 28, 2007.

6 DATED this 19<sup>th</sup> day of October, 2007.

7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,  
15 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Al Malinowski  
17 Big Sky Resort Area District  
18 PO Box 160661  
19 Big Sky MT 59716

20 DATED: October 19th, 2007

21   
22 Mary Baker  
23 Program Supervisor